

CAO 8-1a Instructions for Form CAO 8-1 Decree of Divorce [With Minor Children]

Talk to An Attorney, If Possible. Warning: When you represent yourself in a court case you are held to the same standard as an attorney. This applies to your preparation of paperwork and your conduct at all hearings and/or trial. Your lack of legal knowledge may cause you to make serious errors in handling your case. These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee that your rights are protected or that you will be satisfied with the result. You should always talk to a lawyer about your legal problems before filing any legal paperwork. Even if you do not hire a lawyer to appear in your case, you may be able to find a lawyer to review your paperwork or give you more information about your rights. Call the Idaho State Bar (208-334-4500) to get the name of an attorney who handles this type of case. Contact the Court Assistance Office for information about resources for low-income people.

Make a copy of the form to use as a rough draft before writing on it. The document you file with the court must be neat and easily read, with no cross-outs or white-outs. Type or print legibly IN BLACK INK to complete the form. You will be filling in blanks and checking boxes to select the paragraphs you want included in your document. These paragraphs are shown with “or” at the end of the paragraph. Check the boxes for the paragraphs you want included. Put N/A (not applicable) by all boxes that you do not select. On the computer forms you can delete the optional paragraphs that you don’t select instead of typing N/A.

In an uncontested (default) divorce, the Decree of Divorce must have exactly the same information as the Complaint. You cannot change anything without the agreement of the other party. If you do need or want to make changes that both of you agree upon, you can file a “Stipulation for Entry of a Decree of Divorce”. Use Court Assistance Office Form No. CAO 6-8 and CAO Instruction 5A. If you don’t agree to the changes, you have to file an Amended Complaint, serve it on your spouse and wait 20 days before a Decree of Divorce can be granted on the Amended Complaint.

- At the top left-hand corner of page 1, fill in your name, address and telephone number.

Exactly as you did in the Complaint:

- Fill in the county and judicial district in the heading (for example, “In the District Court of the Sixth Judicial District in and for the county of Bannock”).
- Fill in your full legal name in the caption above “Plaintiff”.
- Fill in your spouse’s full legal name above “Defendant”.
- **Fill in the Case Number written on the Complaint by the court clerk.**
- Leave the date blank in the opening sentence. The judge will write in the date.
- Check either the first box if this is a default divorce, or the second box if you and your spouse filed a written stipulation (Form CAO 6-8) for the entry of this Decree.
- Fill in the full legal name and date of birth for each minor child.

2. Legal Custody: *“Joint legal custody” means each parent has decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren. The court will give joint legal custody to both parents unless you can prove it would not be in the best interest of the minor child/ren for one parent to have decision-making rights.*

- Check the first box if both parents are to have decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren. **or**
- Check the second box if a parent will have sole legal custody of the child/ren, **and**
- Write in the name of the parent who will be given sole legal custody.

3. Physical Custody: *“Joint physical custody” means each parent has frequent and continuing contact with the child/ren. With joint physical custody each parent has significant periods of time in which a child resides with or is under his/her care and supervision. The parenting time is not necessarily 50/50, and the child/ren does not necessarily alternate back and forth between the parents. “The court will award joint physical custody unless you can prove it would not be in the best interest of the minor child/ren to spend time with each parent on a regular basis.*

- Check the first box if both parents will be given physical custody of the child/ren **and**
 - Attach a copy of the Parenting Plan, marked “Exhibit A” (if this is a default divorce, use the same Parenting Plan you attached to the Complaint). **IMPORTANT: The Parenting Plan must be attached to make it a part of the Decree of Divorce.**

or

- Check the second box if the court will give physical custody of the child/ren to only one parent, **and**
- Write in the name of the parent who will be given sole physical custody.
 - If the court’s order will give the other parent restricted or conditional time with the child/ren, write in the parent’s name **and**
 - write in the terms and conditions of the other parent’s time with the child/ren.

4. Child Support:

If there is already an order signed by a judge that sets child support, for example in a case filed by the Department of Health & Welfare,

- Check the first box.

WARNING: You should be aware that jurisdiction as to child support is a complicated issue and you should seek the advice of an attorney with respect to continuing jurisdiction if the child support order was issued in a different county than the one where you will be filing the Divorce.

or

If there is NOT a child support order, you will first need to complete an Affidavit Verifying Income and a Child Support Worksheet. A Court Assistance Officer will be able to help you generate these documents if you provide the required information. The Child Support Worksheet will be used to complete this section.

- Check the second box.
- Write in the name of the parent who will pay child support **and**
- the total monthly amount (the Recommended Base Support amount plus or minus any adjustments for health insurance premiums and/or the tax dependency).
- Fill in the Recommended Base Support amount of child support

- If your child support calculation includes adjustments for sharing health insurance premiums and/or tax benefits,
 - Check the boxes that apply and fill in the amounts.
- If you have more than one minor child, you will need to have a separate calculation to reflect the changed amount of support as each child is emancipated (no longer eligible for support under Idaho law).
 - Fill in the total amount of child support, as calculated according to the Idaho Child Support Guidelines.

WARNING: If you are the parent who will pay child support (the “obligor”) you should be aware the court order will allow collection of child support from your wages and from your real estate or personal property. The order will also allow child support to be enforced directly by courts in other states if you move to another state. Additionally, you should be aware that, according to Idaho law, if unpaid child support equals or exceeds the total support owing for ninety (90) days or the sum of \$2,000, whichever is less, you are subject to suspension of any license to practice or engage in any business, occupation or profession, operate a motor vehicle, carry a concealed weapon, or engage in any recreational activity, including hunting or fishing. Further, the State Tax Commission will withhold and set-off any state tax refund to collect any unpaid child support and the Idaho State Lottery will likewise withhold and set-off a prize of a lottery prize-winner.

Extended Visits. If the child/ren lives in the home of one parent at least 75% of the time, you can choose either or both of the next two paragraphs of the form.

- If the child/ren spends more than 25% of the year with each parent (shared physical custody), write “N/A” by each box for the next two paragraphs of the form. NOTE: Section 10(e) of the Idaho Child Support Guidelines, Rule 6(c)(6) of the Idaho Rules of Civil Procedure, describes “Shared Physical Custody” and computation of child support with that parenting arrangement. You can get a copy of the Child Support Guidelines from a Court Assistance Office or the Internet at <http://www2.state.id.us/judicial/rules/ircp6c6.rul>.
- If you selected the first paragraph, indicate how much the support payment will be reduced by either checking the box for 50% or filling in your own percentage. You will need to notify the Department of Health & Welfare, Child Support Services when this paragraph should take effect.
- If you have more than one child, you can also check the box to select the next paragraph.
and
- check the box for 50% or fill in your own percentage.

5. Health Insurance. Check the first, second or third box to indicate how health insurance coverage for the child/ren is now being taken care of. If you selected the first paragraph, write in the name of the parent(s) who is now taking care of health insurance.

Payment of Health insurance.

- If you DID figure this cost in your child support calculation, check the first box. **or**
- If you did NOT figure this cost in your child support calculation, check the second box **and**

- Fill in the percentages each parent will pay. (These percentages are determined when calculating the child support. Refer to the Child Support Calculation Sheet).

***WARNING:** The Order will provide: Failure to provide medical insurance coverage may result in the direct enforcement of a medical support order by a parent or the Department of Health and Welfare. A national medical support notice will be sent to the parent's employer, requiring the employer to enroll the child in a health benefit plan as provided by Sections 32-1214A through 32-1214J, Idaho Code, and applicable rules of the Department of Health & Welfare.*

6. Health Care Costs Not Paid by Insurance.

- Fill in the percentages each parent will pay. **and**
- Check the box if both parents will pay the care provider directly.

8. Income Tax Exemption: Write in the blank the parent who will claim each child as a dependent on their income tax return(s). ***Note: The child support calculation must reflect the same designation.***

***WARNING:** The rules of separate property (owned by only one of you) and community property (owned by both of you) can be extremely complicated. The following general guidelines may not apply to your situation. For example, some separate property may have been improved with community funds (or vice versa). Also, interest or other income from separate property is considered to be community property. If you have a lot of property or have any questions about whether it is separate or community property, please talk to an attorney.*

***Separate property** is property either of you owned before the marriage or received during the marriage by gift or inheritance or in exchange for other separate property.*

***Community property** is property acquired by one or both of you during the marriage unless the property was given to either of you separately as a gift, inheritance or in exchange for other separate property.*

***Real property** (or real estate) is land with or without buildings. If you own real estate, include the legal description from the deed to the property. It is important that you don't make any errors in the legal description. It must be exactly the same as it is in the deed.*

***Personal property** is all property that is not real estate. Personal property includes furniture, clothing, vehicles, mobile homes, cash, bank accounts, securities and debts owed to you by someone else. It also includes retirement accounts; but, if either of you have retirement accounts you definitely should talk to an attorney before proceeding.*

9. Separate Property.

- If there is no need to explain ownership of separate property or if there is no separate property, check the first box. . **or**
- If you want the court to order that specific separate property belongs to the Husband and/or an order that Husband's separate property, now in the possession of the Wife, be returned to the Husband, check the box and describe the property in the first section of Exhibit C.
- If you want the court to order that specific separate property belongs to the Wife and/or an order that Wife's separate property, now in the possession of Husband, be returned to the Wife, check the box and describe the property in the first section of Exhibit D.

10. Community Real Property (land).

- If you have not acquired a home or other real estate during the marriage, check the first box.
or
- If you have acquired community real property during the marriage, check the second box
and
 - fill in the residential address of the property (house number and street name),
 - the city and county **and**
 - the legal description for the property (Use the legal description in the deed. If the legal description is long, you can photocopy the deed, cut out the legal description and paste it on a separate sheet of paper to use as an exhibit. Write: "See legal description on Exhibit ___ which is attached [assign a number to the Exhibit]. Attach the exhibit. **and**
- Check one of the next three boxes to indicate what will be done with the community real property and any equity and fill in the blanks **or**
- Check the last box and write in your own words what will be done with the property and any equity in the property.

***Note:** If the amount of the equity payment is large and will be spread out into periodic payments, you should talk to an attorney about the right way to insure the payments are made.*

Disposition of Real Property. A "**lien**" is a legal right or interest that a creditor has in another's property (for example the mortgage loan). The mortgage loan and any other lien against the property should be listed in the Debt Section. We recommend you discuss your mortgage loan or any other lien on your property with your lending institution or lien holder and talk to an attorney before proceeding. As long as both of your names are on the loan, you will both continue to be responsible for payment until the loan is paid in full. If the payment isn't paid by the one assigned to pay it, the lender may collect from either of you. Also, if the property is foreclosed, both of you could be held responsible for any deficiency in paying off the loan after foreclosure sale. "**Equity**" is the difference between what the property would sell for and what is owed against the property (all liens).

11. Community Personal Property.

- If you have not acquired any community personal property, check the first box. **or**
- If you have already divided your community personal property and each of you have the property in your possession, check the second box. **and/or**
- If you want the court to order that specific property be given to the Husband and the property is already in Husband's possession, check the third box and list the property in the second section on Exhibit C (Husband's property) **and/or**
- If you want the court to order that specific property be given to the Wife and the property is already in Wife's possession, check the fourth box and list the property in the second section on Exhibit D (Wife's property).
- If there is property that the Husband will be given which is still in the possession of the Wife, check the third box **and** list the property in the third section on Exhibit C (Husband's property).
- If there is property that the Wife will be given which is still in the possession of the Husband, check the fourth box **and** list the property in the third section on Exhibit D (Wife's property).

***Note:** The Decree of Divorce can be used to transfer titles or deeds; but only if the description of the property is first listed in the Complaint or you have stipulated to this Decree of Divorce. The*

description must be complete and accurate (example: for vehicles, include all identifying information on the title [make, model, year, VIN number]; for real property, include the legal description of the property from the deed or the County Assessor's office).

If you have listed any property on Exhibit C or Exhibit D, the Exhibits must be attached to every copy of the Decree of Divorce. If there are no changes that you have agreed upon, use the same Exhibits C and/or D that you attached to the Complaint.

12. Debts. *Generally, separate debts are debts incurred by either of you prior to marriage or during marriage if incurred to improve or maintain separate property (see the description of community and separate property above). Community debts are all other debts incurred during marriage.*

- If you do not know of any unpaid debts, check the first box. **or**
- If there are debts the Husband will be ordered to pay, check the second box and list each creditor.
- If there are debts the Wife will be ordered to pay, check the third box and list each creditor.

Note: *If both of you are going to pay a part of the same debt, also put in the amount each of you will pay.*

Note: *A divorce is between you and your spouse. Your debts are between you and your creditors and, if a bill doesn't get paid, the creditor may be able to collect from either of you, especially if both of your names are on a loan contract. However, if the debt is listed in the divorce papers and the person ordered to pay a debt does not make payment and the other party is forced to pay the debt, that party may have some remedy before the court.*

13. Debts incurred since separation. If you want the judge to order that each party will pay any debt incurred by them after you stopped living together,

- Check the box and fill in the date you separated.

14. Name change. If either party wants to stop using the last name of the spouse and go back to using their former last name (any name legally used), write in the full name of the person wanting the name change and fill in the former **last name only**. (Accurate spelling is very important.)

Leave the date blank. The judge will fill in the date when s/he signs the Decree of Divorce.

Sign the Decree of Divorce. if you and your spouse filed a written stipulation (Form CAO 6-8) for the entry of this Decree, in the space below the line for the judge's signature, each of you will write "Approved by" and then sign your name and write the current date.

Clerk's certificate of service: Fill in name, mailing address, city, state and zip code for Husband and Wife. Leave the date blank. The clerk will fill it in when s/he signs the certificate.

Exhibits: Attach all required Exhibits to every copy of the Decree (with a staple). The Exhibits may include: Parenting Plan (Exhibit A), the Affidavit Verifying Income, the property lists (Exhibits "C" and/or "D").

REMOVE THESE INSTRUCTIONS.

Make three copies of the Decree with all the Exhibits attached, giving you a total of four full sets.

CONTINUE TO FOLLOW INSTRUCTION NO. 5 or 5A TO FINALIZE YOUR DIVORCE.